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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/905,046 08/01/97 CASSELS

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HM12/1018

JOHN F MORAN
OFFICE OF COMMAND JUDGE ADVOCATE
HQ USAMRDC
DEPARTMENT OF THE ARMY FORT DETRICK
FREDERICK MD 21702-5012

EXAMINER

DEVI, S

ART UNIT

PAPER NUMBER

1645

11

DATE MAILED: 10/18/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/905,046

Applicant(s)

Cassels et al.

Examiner

S. Devi, Ph.D.

Group Art Unit

1645



☒ Responsive to communication(s) filed on 09/25/2000.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 3-12 ~~is~~are pending in the application.

Of the above, claim(s) 7, 10, and 11 ~~is~~are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 3-6, 8, 9, and 12 ~~is~~are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Change of Art Unit Location

1) Effective 20 June 2000, the Art Unit location of your application in the US PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Technology Center 1600, Group 1640, Art Unit 1645.

Applicants' Amendment

2) Acknowledgment is made of Applicants' preliminary amendment filed 09/25/2000 (paper no. 10), which amendment has been entered into the case. With this, Applicants have amended the specification.

Status of Claims

3) Claims 1 and 2 have been canceled via the amendment filed 09/25/2000.
Claims 3-6, 8 and 9 have been amended via the amendment filed 09/25/2000.
New claim 12 has been added via the amendment filed 09/25/2000.
Claims 3-12 are pending in this application.
Claims 3-6, 8, 9 and 12 are under examination.

Prior Citation of Title 35 Sections

4) The text of those sections of Title 35 U.S. Code not included in this action can be found in a prior Office Action.

Prior Citation of References

5) The references cited or used as prior art in support of one or more rejections in the instant Office Action and not included on an attached form PTO-892 or form PTO-1449 have been previously cited and made of record.

Objection(s) Moot

6) The objection to claim 1 made in paragraph 9(a), (d) and (e) of the Office Action mailed 06/21/2000 (paper no. 9) is moot in light of Applicants' cancellation of the claim.

Objection(s) Withdrawn

7) The objection to the specification made in paragraph 6 of the Office Action mailed

06/21/2000 (paper no. 9) is withdrawn in light of Applicants' amendments to the specification.

8) The objection to claim 3 made in paragraph 9(c) of the Office Action mailed 06/21/2000 (paper no. 9) is withdrawn in light of Applicants' amendment to the claim.

9) The objection to claim 4 made in paragraph 9(e) of the Office Action mailed 06/21/2000 (paper no. 9) is withdrawn in light of Applicants' deletion of the word "family" in the last line of the claim. It is noted that Applicants have not indicated the deletion of this word from the claim by providing it in parenthesis, as required.

Rejection(s) Moot

10) The rejection of claims 1 and/or 2 made in paragraphs 8(a), (b), (e) and (h) of the Office Action mailed 06/21/2000 (paper no. 9) under 35 U.S.C. §112, second paragraph, as being indefinite, is moot in light of Applicants' cancellation of the claims.

Rejection(s) Withdrawn

11) The rejection of claim 7 made in paragraph 7 of the Office Action mailed 06/21/2000 (paper no. 9) under 35 U.S.C. § 112, first paragraph, as being non-enabled with respect to the deposit issue, is withdrawn in light of Applicants' compliance with 37 C.F.R. § 1.801-1.809.

12) The rejection of claims 3-6, 8 and 9 made in paragraph 8(c), (d), (f), (g) and (h) of the Office Action mailed 06/21/2000 (paper no. 9) under 35 U.S.C. §112, second paragraph, as being indefinite, is withdrawn in light of Applicants' amendments to the claims.

Rejection(s) Maintained

13) The rejection of claims 4 and claims 5 and 6 made in paragraph 8(e) and 8(h) of the Office Action mailed 06/21/2000 (paper no. 9) under 35 U.S.C. § 112, second paragraph, as being indefinite, with regard to the abbreviation "CS4-CFA/T", is maintained for reasons set forth therein and those that are set forth below. New claim 12 is now rejected on the same grounds. See paragraph 14 below.

The Applicants contend that "the term is that used throughout the literature and would not be confusing to any one of skill in the art".

The Applicants' argument has been carefully considered, but is not found persuasive. Contrary to the Applicants' contention, the literature indicates otherwise. For example, the term

"CFA" in the literature is commonly used to refer to "Complete Freund's Adjuvant", which is different from what is recited in the instant claim. See Example 3 of US patent 6,045,799. For this reason, it is suggested that Applicants use the full terminology --colonizing factor antigens-- at first occurrence in the claim(s), with the abbreviation retained in parenthesis, since such a full terminology is fully supported in the last paragraph of page 1.

New Rejection(s)

Applicants are asked to note the new rejection(s) made in this Office Action. The Applicants' amendment, i.e., the addition of new claim 12, necessitated the new ground(s) of rejection presented in this Office Action.

Rejection(s) under 35 U.S.C. § 112, Second Paragraph

14) Claim 12 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

(a) Claim 12 is confusing and indefinite in the use of the abbreviation "CS4-CFA/T" in the claim language. See paragraph 13 above for explanation.

(b) Claims 3-6, 8 and 9, which depend directly or indirectly from claim 12, also stand rejected under 35 U.S.C. § 112, second paragraph, because of the defect(s) in the base claim identified above in subparagraph (a).

Remarks

15) Claims 3-6, 8, 9 and 12 stand rejected. These claims are free of prior art currently of record.

16) It is noted that the abstract of the instant application contains a peptide sequence, which is **not** identified by a SEQ ID NO. as required under sequence rules. Correction is requested.

17) If Applicants desired rejoining of non-elected method claims with the non-obvious product claims at the time of possible allowance, Applicants should amend the pending method claims to depend from or otherwise include all the limitations of the allowable product claims. Applicants' attention is drawn to MPEP § 821.04, a part of which states:

In view of the rejoinder procedure, and in order to expedite prosecution, Applicants are encouraged to present such process claims, preferably as dependent claims, in the application at an early stage of prosecution.

Process claims which depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance. Amendments submitted after final rejection are governed by 37 CFR 1.116. Process claims which do not depend from or otherwise include the limitations of the patentable product will be withdrawn from consideration, via an election.

18) THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center located in Crystal Mall 1. The transmission of such papers by facsimile must conform with the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The CM1 facsimile center's telephone number is (703) 308-4242.

20) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. The Examiner can normally be reached on Monday to Friday from 8.00 a.m to 4.00 p.m. A message may be left on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


S. Devi
Patent Examiner
October 2000


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600